

U.S. Serial No. 10/779,509
Amendment Dated February 17, 2006
Response To Office Action Dated November 17, 2005

REMARKS

The pending application was filed on June 13, 2004 with claims 1-28. The Examiner issued a Non-Final Office Action dated November 17, 2005 objecting to claims 6-8, 12, 18, 19, 23, 25, 27 and 28 and rejecting claims 1-5, 9-11, 13-17, 20-22, 24 and 26. In particular, the Examiner rejected claims 1-5, 9-11, 13-17, 20-22, 24 and 26 under 35 U.S.C. §103(a) as being unpatentable over United State Patent No. 3,616,685 to *Strom* in view of United States Patent No. 6,935,159 to *Knight*.

Claims 1-28 were pending in this application. In view of the arguments presented below, claims 1-28 are allowable, and the Examiner is respectfully requested to withdraw the rejections and issue a timely Notice of Allowance.

I. REJECTION OF CLAIMS 35 U.S.C. §103(a)

The Examiner rejected claims 1-5, 9-11, 13-17, 20-22, 24 and 26 under 35 U.S.C. §103(a) as being unpatentable over United State Patent No. 3,616,685 to *Strom* in view of United States Patent No. 6,935,159 to *Knight*. The Examiner argued that *Strom* discloses a device for measuring properties associated with aerated particles including an outer container, an inner container positioned in the outer container, at least one load application device, and a pressure sensing device. The Examiner concluded, however, that *Storm* does not expressly disclose a device and method for measuring properties associated with aerated particles wherein the fluid contained in the outer container is usable to determine changes in volume of aerated particles contained in the inner container by monitoring the change in

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volume or level of the fluid in the outer container, or a storage device to store acquired/measured data parameters. The Examiner asserted that *Knight et al.* discloses a device having many of the recited elements, including an outer rigid container, an inner flexible container, an inlet, an outlet, a load applicator, a sensor for measuring the load, and a computer processor for receiving/storing data and performing calculations. The Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ sensors measuring the volume change and a computer/processor storage device, as taught by *Knight et al.*

The instant patent application was filed February 13, 2004 and claims priority to a U.S. provisional patent application that was filed February 14, 2003. *Knight et al.* on the other hand was filed November 19, 2003, which is after the filing date of the instant patent application. Thus, *Knight et al.* may not be used as a prior art reference for the instant patent application. Therefore, the rejection under 35 U.S.C. §103(a) is improper, and the Examiner is respectfully requested to withdraw the rejection.

Furthermore, *Strom* discloses a load application device for measuring loads applied to soil samples placed within a flexible rubber cylinder (35). See *Strom*, column 3, lines 45-50. The load application device of *Strom* is formed from the flexible rubber cylinder (35) positioned within an outer container. During use, the space between the outer and flexible rubber cylinder (35) is filled with water. See *Strom*, column 3, lines 60-64. *Strom* states that "the pressure in the chamber 22 [is] built up to any desired value to simulate anticipated field

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conditions on the soil, the limit usually being about 100 p.s.i. using a Plexiglass cylinder 16." *Strom*, column 3, lines 64-67. In stark contrast, the claimed invention is directed to a device for measuring properties associated with aerated particles, wherein the fluid contained in the outer container is usable to determine changes in volume of aerated particles contained in the inner container. *Strom*, on the other hand, discloses filling such an area with water and pressurizing the water to support the inner chamber. *Strom* does not disclose determining a change in volume in this region. Thus, *Strom* does not disclose the claimed invention. Therefore, for at least these reasons, claims 1-28 are allowable, and the Examiner is respectfully requested to withdraw the rejection.

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CONCLUSION

For at least the reasons given above, claims 1-28 define patentable subject matter and are thus allowable. Should the Examiner believe that anything further is necessary in order to place the application in better condition for allowance, the Examiner is respectfully requested to contact the undersigned representative at the telephone number listed below.

No fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 50-0951.

Respectfully submitted,



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